

PROTECTION OF TRADEMARKS IN CHINA

Exchange of notes at Washington March 19 and 25, May 27, and June 12, 1907

Entered into force June 12, 1907

*Became obsolete May 20, 1943*¹

Treaty Series 487

The Danish Minister to the Secretary of State

[TRANSLATION]

LEGATION OF DENMARK

WASHINGTON, D.C., *March 19, 1907*

MR. SECRETARY OF STATE: By order of my Government I have the honor to beg that Your Excellency will kindly let me know whether the Government of the United States would be disposed to conclude an arrangement with the Government of the King for the reciprocal protection in China of the trade-marks of the citizens of our two countries when the said trade-marks are duly registered in the country of the infringer.

Should the Government of the United States be disposed to conclude such an arrangement, the King's Government would take the necessary measures to have Danish subjects who would infringe in China an American trade-mark duly registered in Denmark, brought before the Danish Consular Court at Shanghai and eventually punished in accordance with the provisions of the law of Denmark.

The Government of the King would expect the Government of the United States to take similar measures in regard to American citizens who might violate in China the privilege of a Danish subject whose trade-mark is duly registered in the United States.

¹ Date on which the United States relinquished extraterritorial rights in China, pursuant to treaty of Jan. 11, 1943 (TS 984, *ante*, vol. 6, p. 739, CHINA).

I am authorized to add that my Government would be very glad if such an arrangement could be effected by means of an exchange of notes between Your Excellency and me.

Hoping that Your Excellency will see no objection to assenting to this proposal of my Government, I beg you to accept, Mr. Secretary of State, the renewed assurance of my high consideration.

C. BRUN

The Secretary of State to the Danish Minister

No. 671

DEPARTMENT OF STATE,
WASHINGTON, *March 25, 1907*

SIR: I have the honor to acknowledge the receipt of your note of the 19th instant, in which, by order of your Government, you inquire whether the Government of the United States would be disposed to conclude with that of Denmark an arrangement by an exchange of notes for the reciprocal protection in China of trade-marks of the citizens of either country from infringement by citizens of the other when the said trade-marks are duly registered in the country of the infringer.

By this agreement Danish subjects infringing in China an American trade-mark duly registered in Denmark would, you state, be brought before the Danish Consular Court at Shanghai and eventually punished in accordance with the provisions of the law of Denmark, and the Government of the King would expect the Government of the United States to take similar measure in regard to American citizens who might violate in China the privilege of a Danish subject whose trade-mark is duly registered in the United States.

The agreement proposed by your Government is in line with the agreements which have been effected by exchange of notes between the Minister of the United States at Peking and the diplomatic representatives there of certain other countries.

It is to be pointed out, however, that in view of the fact that there is no statute in the United States making the infringement—counterfeiting, etc., of a trade-mark—a criminal offense, and that effectual provision exists by a civil action for damages by the owner of a trade-mark, the word “punishment” is to be understood, with respect to the United States, to refer to a civil action only and not to a criminal procedure.

If this explanation, which has been made in the case of each of the agreements mentioned above, is satisfactory to your Government, I shall be pleased to make the exchange of notes with you.

Accept, Mr. Minister, the renewed assurances of my highest consideration.

ELIHU ROOT

The Danish Chargé d'Affaires to the Secretary of State

[TRANSLATION]

DANISH LEGATION

May 27, 1907

MR. SECRETARY OF STATE: Referring to note No. 671, which Your Excellency had the kindness to address to the legation on March 25 last, I have the honor, by order of my Government, to inform you that the necessary instructions have been sent to the Danish consul at Shanghai (the consular headquarters for the whole of China) in order to authorize him to protect American trade-marks, duly deposited in Denmark, against violations by Danish subjects in China, to the same extent as Danish marks of the same nature are protected.

The law which the Danish court at Shanghai is called upon to enforce in the premises is the Danish law of April 11, 1890, amended by the law of December 19, 1898, and the ordinances of September 28, 1894, and September 12, 1902.

Hoping to receive a note informing me that the diplomatic and consular officers of the United States in the Middle Kingdom have had the necessary instructions sent to them in order to insure reciprocity by granting the protection of the United States Consular Courts in China to Danish subjects against American citizens who have counterfeited Danish trade-marks regularly deposited in the United States, I beg of you, Mr. Secretary of State, to accept the renewed assurance of my highest consideration.

J. CLAN

The Secretary of State to the Danish Chargé d'Affaires

DEPARTMENT OF STATE

WASHINGTON, June 12, 1907

No. 694

SIR: I have the honor to acknowledge the receipt of your note of the 27th ultimo by which you inform me that in pursuance of the understanding reached by the correspondence which passed between the Danish legation and the Department of State on March 19 and 25, 1907, the necessary instructions have been sent to the Danish consul at Shanghai (the consular headquarters for the whole of China) in order to authorize him to protect American trade-marks, duly deposited in Denmark, against violations by Danish subjects in China, to the same extent as Danish marks of the nature are protected.

As a completion of the exchange of notes to give the said understanding effect, I have the honor to inform you that, on the part of the United States,

the Minister of the United States at Peking has this day been instructed to inform the consular officers of the United States in China that hereafter trade-marks of Danish subjects, which have been duly registered in the United States, are to be protected against infringement by such persons as come under the jurisdiction of the United States Consular Courts in China.

Accept, sir, the renewed assurances of my high consideration.

ELIHU ROOT